(Reserved judgment)

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Civil Writ Petition No. 1797 (S/B)/2002

Surbir Singh & another. ... Petitioners.

Versus

State of U.P. through its Director,
U.P. Jal Nigam, Lucknow & others ... Respondents

HON'BLE P.C. PANT- J:

This writ petition has been moved under Article 226 of Constitution of India for mandamus directing the respondents to release the arrears of salary to the petitioners.

Brief facts of the case are that the petitioners were initially appointed as Work Agents on 10.10.1985 on daily wages in U.P. Jal Nigam (respondent No. 1). The respondent No. 1 vide office memorandum dated 08.01.2002 (Annexure 1 to the writ petition) regularized the services of the work Agents with effect from 01.04.1991 on their completion of five years' satisfactory service. Accordingly services of petitioners were confirmed from said date, i.e. 01.04.1991 for the purposes of their seniority by Superintending Engineer, U.P. by his letter dated 18.04.2002 (copy Annexure 5 to the writ petition). The pay scale of the petitioners is Rs 825 – Rs 1200 and they were entitled to the arrears of pay with effect from 01.04.1991 which according to the petitioners comes out to be Rs/ 1,5,400.00 for each of the petitioner while the respondents have paid only Rs 35,000.00 to each of the petitioner. Hence the writ petition.

Counter affidavit was filed on behalf of the respondents No.2 to 4 in which facts relating to engagement of petitioners as work agent since 10.10.1985 and regularization with effect from 01.04.1991 have not been denied. It is stated in

the counter affidavit that while confirming and regularizing the petitioners with effect from 01.04.1991 no order as to entitlement of arrears of salary was made in order dated 08.01.2002. In para 5 of the counter affidavit it has been further stated that the payment as to arrears with effect from 01.04.1990 was held up under order dated 13.11.1997 of the Chief Engineer, Jal Nigam (Annexure 1 to the counter affidavit) as decision was to be taken in this regard. As such, the petitioner's case is misconceived as to the entitlement of arrears of salary with effect from 01.04.1990.

I heard learned counsel for the parties and perused the record.

The main question before this court is whether the petitioners are entitled on their regularization from the back date, i.e. 01.04.1990 to the arrears of pay from said date or not.

It is not disputed that the petitioners were initially appointed as work Agents on daily wages with effect from 10.10.1985. It is also not disputed that their services were regularized as work agents by order dated 08.01.2002 (copy Annexure 1) in the pay scale of work agent with effect from 01.04.1991. The dispute is only as to the entitlement of the pay scale from the date of regularization as the petitioners have no complain as to the payment of the pay with effect from the date the aforesaid order of regularization was passed. In short, in the counter affidavit neither the entitlement of the petitioners of arrears of salary of the petitioners is denied nor admitted rather it has been stated that the decision is to be taken in the matter. In para 3 of the supplementary affidavit dated 15.04.2004 filed on behalf of the respondents shows that the respondents are themselves not clear as to the entitlement of payment of arrears of salary to the petitioners for any said part, it has been stated that the order dated 13.11.1997 by which the payment of arrears were held up, was suspended vide order dated

01.12.2001 and again by means of office memorandum dated 04.02.2002 the order dated 01.12.2001 was suspended.

Learned counsel for the respondents stated that the financial condition of the Uttaranchal Pay Vikas and Nirman Nigam is in a bad shape and many issues between the U. P. Jal Nigam and respondent No.2 are to be finalized, the Nigam is not in a position to make payment of arrears to the employees. That submission, by itself, can not be said to sufficient to deprive the petitioners of their dues. Had there been some clause in the order dated 08.01.2002 (Annexure 1) by which the services of the petitioners were regularized with effect from 01.04.1991 mentioning that there will be no payment of the pay scale given to them prior the date of the order, the petitioners would have been out of court. However, the said order is silent on this point, as such, a negative interpretation can not be drawn against the petitioners as regularization can be made only against certain post which carry a certain pay scale.

Therefore, this court has no hesitation in holding that the petitioners who were regularized by aforesaid order dated 08.01.2002 as Work Agents with effect from 01.04.1991 are also entitled to the pay scale of said post from said date, i.e. 01.04.1991. However, this court is not expressing any opinion as to the extent of liability of payment of arrears by the contesting respondents of Uttaranchal Pay Vikas and Nirman Nigam vis a vis U.P. Jal Nigam as the issues related to extent of liabilities between U.P. Jal Nigam and respondent No. 2 are not clear if settled on such issue. With these observations the writ petition is allowed as against both the respondents No.1 and 2. No order as to costs.

(P.C. Pant – J)

Dated: August 4, 2004
S.S. Negi